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of the United States

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Decision

Matter of: Northrop Grumman Information Technology, Inc.

File: B-290080; B-290080.2; B-290080.3

Date: June 10, 2002

John J. Fausti, Esq., and Monica C. Parchment, Esq., John J. Fausti & Associates, for the protester.

Thomas P. Humphrey, Esq., and John E. McCarthy, Esq., Crowell & Moring, for TRW, Inc., an intervenor.

Sharon A. Jenks, Esq., Department of the Air Force, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee engaged in “bait and switch” with respect to key personnel is denied where agency chose not to incorporate awardee’s key personnel provision into contract for administrative convenience, not because the awardee’s proposal evidenced intent not to have the key personnel available to perform.

2. Protest that agency should not have assigned protester and awardee the same risk rating for systems management/program management factor is denied, where record shows that agency recognized the risks in each proposal, and concluded that both translated into moderate risk; protester’s mere disagreement with this conclusion does not demonstrate that evaluation was unreasonable.

3. Agency engaged in meaningful discussions with protester where, during discussions, it pointed out significant weaknesses.

DECISION

Northrop Grumman Information Technology, Inc. protests the award of a contract to TRW, Inc. under request for proposals (RFP) No. F25600-00-R-5017, issued by the Department of the Air Force for systems engineering, systems management, program management, systems sustainment, and contract transition for the Air Force Weather

Weapon System (AFWS or SEMS contract). Northrop complains that the Air Force improperly evaluated proposals, and failed to hold meaningful discussions.¹

We deny the protest.

The solicitation anticipated the award of a cost-plus-award-fee contract for a base period of 6 months, with 5 option years. The solicitation advised offerors that the contract would be awarded on the basis of the best value to the government, after an evaluation of proposals against the following criteria (with the non-price factors, collectively, significantly more important than price): mission capability (systems engineering, systems management/program management, systems sustainment, transition, small business utilization); proposal risk; past performance; and cost/price. Regarding the mission capability subfactors, systems engineering and systems management/program management were equal in weight to each other and more important than the other factors; systems sustainment was equal to transition; and small business was the least important. Also with respect to the mission capability subfactors, the solicitation set forth performance threshold requirements against which the proposals would be evaluated, as well as performance objective requirements. The solicitation also contained a performance requirement document (PRD) that listed requirements the contractor would be required to meet in each area.

Three offerors, including TRW and Northrop, responded to the solicitation. A source selection evaluation team (SSET) evaluated the mission capability factor, assigning each subfactor a color rating (blue-exceptional, green-acceptable; yellow-marginal and red-unacceptable) and a proposal risk assessment (high, moderate or low). The color rating was based on how well the proposal met the evaluation thresholds and solicitation requirements, and the risk rating was based on the risks and weaknesses associated with each offeror's proposed approach. RFP § M 6.6.1. A performance risk assessment group (PRAG) evaluated past performance by assigning a confidence assessment rating to each proposal, and a cost team evaluated proposed costs for realism and reasonableness.

Following the initial evaluation, three rounds of written discussions (and face-to-face discussions if requested), and the submission and evaluation of final proposal revisions (FPR), TRW's and Northrop's proposals were rated green for all mission capability subfactors. Performance Analysis Report (PAR) at 2 and 66. TRW's proposal received a low performance risk rating under the systems engineering and small business utilization subfactors, and moderate risk ratings for the remaining subfactors. PAR at 66. Northrop's proposal was rated moderate risk for systems engineering, systems/property management and systems sustainment, and low risk

¹ Northrop has filed a supplemental protest (B-290080.4) that we intend to address in a separate decision.

for transition and small business utilization. Id. Both offerors received “significant” confidence ratings under the past performance factor. Id. TRW’s “most probable cost” (\$54,982,655) was somewhat higher than Northrop’s [DELETED]. Id. The source selection authority (SSA) reviewed the evaluation results in the PAR, and made award to TRW on the basis that its proposal provided the best value to the government. This protest followed.²

Northrop challenges the award decision on numerous grounds. Based on our review of the record, we find all of Northrop’s arguments to be without merit. We discuss the primary issues below.

EVALUATION OF NORTHROP’S FPR

Northrop asserts that the SSET did not present the SSA with the exact changes that Northrop made in its FPR, and that the SSA therefore made the award decision based on inaccurate information.

This argument is without merit. There was no requirement that the SSA be made aware of the exact proposal changes that offerors made in their FPRs; rather, the SSET was responsible for evaluating the technical proposals, including the FPRs, and then presenting the results of its evaluation to the SSA. The record confirms that this is what happened. The SSET compiled the evaluation results in the PAR, which clearly indicates that the SSET reviewed the proposal changes Northrop made in its FPR. For example, the PAR, at pages 59 and 61, specifically discusses Northrop’s FPR changes regarding the [DELETED] and [DELETED]. Since the SSA reviewed the PAR in making his source selection decision, there is no basis for concluding that his decision was made without knowledge of Northrop’s FPR.

“BAIT AND SWITCH”

The solicitation required proposals to include a list of key personnel who would be available to staff the contract for a minimum of 90 days (except for reasons beyond the employee’s control) at the beginning of contract performance. RFP § H, at 10. Noting that the Air Force did not incorporate TRW’s proposed key personnel into

² Northrop raised a number of issues to which the agency responded in its report, and which Northrop failed to address in its comments on the report. These issues include, for example, that TRW was improperly evaluated as acceptable under the systems sustainment factor, that the agency improperly found that Northrop proposed an inadequate help desk staff, and that the agency performed an unreasonable cost realism analysis of TRW’s proposal because TRW offered unrealistically low salaries, and unsupported cost reduction measures. We consider these issues abandoned and will not address them. Westinghouse Gov’t. and Envtl. Servs. Co., Inc., B-280928 et.al., Dec. 4, 1998, 99-1 CPD ¶ 3 at 7 n.6.

TRW's contract, Northrop asserts that the Air Force intends to allow TRW to engage in an improper "bait and switch," that is, permit TRW to provide a different set of personnel than it proposed.

To establish an improper "bait and switch," a protester must show that the firm either knowingly or negligently made a misrepresentation regarding employees that it does not expect to furnish during contract performance, that the misrepresentation was relied upon in the evaluation, and that it had a material impact on the evaluation results. Advanced Communication Sys., Inc., B-283650 et al., Dec. 16, 1999, 2000 CPD ¶ 3 at 10.

There is no evidence of a "bait and switch" here. TRW included the required list of key personnel in its proposal, and we find nothing in the proposal indicating that TRW did not intend to provide these personnel for at least 90 days at the outset of performance. The agency reports that it did not incorporate this list in TRW's contract, not because there was reason to believe that these personnel would not be available, but to avoid the need to modify the contract in the event of permissible key personnel changes over the life of the contract. Contracting Officer's Report (COR) at 14. In light of this explanation, and since Northrop has presented no evidence--and we find none in the record--suggesting that TRW offered key personnel with the intention of switching them out after award, there is no basis for finding an improper "bait and switch."

MISSION CAPABILITY

Northrop maintains that the Air Force improperly assigned TRW's proposal the same moderate risk rating it assigned Northrop's under the systems management/program management, systems sustainment and transition subfactors.³ In this regard,

³ Northrop also maintains that the evaluation of its proposal under the mission capability factor is internally inconsistent because, in a number of areas, its proposal was assigned a weakness or risk under one subfactor, while being assigned a strength under a different subfactor based on similar considerations. For example, Northrop notes that its proposal was assigned a weakness under the systems engineering subfactor for failing to explain how cost as an independent variable would be used; at the same time, it received a strength under the systems management/program management subfactor on the basis that its system maturity process was integrated with cost analysis. In response, the agency explains that the subfactor evaluations were based on the specific criteria for the subfactor. With regard to the above example, the agency explains that while, under the systems engineering subfactor, Northrop did not adequately address how it would use cost as an independent variable in its systems engineering analysis, Northrop did show, under the systems management/program management subfactor, how it would use cost analysis in the system maturity process. In its comments on the agency report, (continued...)

Northrop notes that TRW's risk rating reflected its proposal to staff the contract by either [DELETED], while Northrop's own risk rating was primarily based on the less significant finding that its [DELETED] was inadequate.⁴ Northrop asserts that TRW's staffing approach warranted a rating of high risk, because there was no basis for the agency to assume that [DELETED] would work for TRW, or that [DELETED].

In reviewing an agency's evaluation of proposals, our review is limited to a determination of whether the agency acted reasonably and consistent with the stated evaluation factors and applicable statutes and regulations. Metropolitan Interpreters & Translators, B-285394.2 et al., Dec. 1, 2000, 2001 CPD ¶ 97 at 5.

The evaluation in this area was unobjectionable. The record shows that the agency fully considered the risk in TRW's staffing approach, and determined that it presented only a moderate--rather than high--risk, because TRW also presented a back-up plan of staffing the contract with [DELETED]. COS at 41. The agency recognized that there also was risk in TRW's back-up plan, PAR at 49, but apparently decided that, overall, the risk that TRW would not be able to staff the contract using one of its approaches was only moderate as defined in the RFP, that is, that there was a risk that the proposal could potentially cause some disruption of schedule, increased cost, or degraded performance, but that special contractor emphasis and close government monitoring would probably be able to overcome any difficulties. RFP § M 6.6.2.2. Northrop has presented nothing--besides its own view of the relative risks of the proposals--to establish that the agency's risk assessment was unreasonable. Northrop's disagreement with the evaluation is not sufficient to show that it was unreasonable. Advanced Communication Sys., Inc., supra, at 13.

As for Northrop's own risk rating, Northrop's argument simply ignores the importance that the Air Force attaches to the help desk operation due to the agency's concern with customer care. COS at 21. In this regard, the PRD states that

(...continued)

Northrop did not refute any of the agency's explanations, instead simply repeating the arguments made in its protest. Based on our review of the solicitation, and the agency's explanation, and in the absence of any response from Northrop, we find that the evaluations under the various subfactors were reasonable, and not inconsistent. Deponte Invs., Inc., B-288871, B-288871.2, Nov. 26, 2001, 2002 CPD ¶ 9 at 3.

⁴ Northrop asserts that the risk inherent in TRW's plan [DELETED] also should have been considered under the systems management/program management subfactor. The PAR shows that the agency did this. For example, in discussing TRW's proposal under this subfactor, the PAR states at page 18 that "TRW's proposal introduced risk for continuity and availability of staffing. [DELETED] staff would be available after the transition period. . . . TRW would not know whether the [DELETED]."

the contractor is required to maintain the highest quality services and customer support. See PRD ¶¶ 1.4, 3.3.13. Again, Northrop's mere disagreement with the agency as to the significance of the risk is not sufficient to demonstrate that the evaluation was unreasonable. Accordingly, we have no basis to question this aspect of the evaluation.

MEANINGFUL DISCUSSIONS

Northrop protests that the agency improperly failed to raise during discussions a number of evaluated weaknesses and risks in its proposal. The Air Force responds that the weaknesses cited either were pointed out during discussions, or were insignificant, and thus were not required to be pointed out.

Although discussions must address at least deficiencies and significant weaknesses identified in proposals, the scope and extent of discussions are largely a matter of the contracting officer's judgement. Millar Elevator Serv. Co., B-284870.4, Dec. 27, 2000, 2001 CPD ¶ 27 at 5. In this regard, we review the adequacy of discussions to ensure that agencies point out weaknesses that, unless corrected, would prevent an offeror from having a reasonable chance for award. Brown & Root, Inc. and Perini Corp., a joint venture, B-270505.2, B-270505.3, Sept. 12, 1996, 96-2 CPD ¶143 at 6. An agency is not required to afford offerors all encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. Id.

We find that the discussions were adequate. For example, Northrop argues that the Air Force failed to discuss its concern that Northrop's proposal showed limited employment of the Management Information System (MIS). However, as the agency points out, this was just one of several noted weaknesses in Northrop's approach to performing the contract, with no indication that it was considered significant. COR at 23-24. This being the case, and since there is no evidence that the weakness prevented the proposal from being rated acceptable under the systems management/program management subfactor, or otherwise prevented Northrop from having a reasonable chance of receiving the award, the agency was not required to discuss this issue with Northrop. See Brown & Root, Inc. and Perini Corp., a joint venture, supra.

Northrop also complains that discussions were misleading because, in advising Northrop that its proposal failed to show a "proactive" approach to systems engineering, the Air Force referenced Northrop's oral presentation, but did not specifically inform Northrop that any information Northrop provided in response was required to be included in its revised proposal. This argument is without merit. Since the oral presentation was part of the proposal, and Northrop responded to the discussion questions regarding its proposal in writing, Northrop should have

understood that its response to the question concerning the oral presentation had to be addressed in its written response.

The protest is denied.

Anthony H. Gamboa
General Counsel